BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

STACIE SANCHEZ	)	
Claimant	)	
VS.	)	
	)	Docket No. 202,088
WAYMAN BROTHERS 66	)	
Respondent	)	
AND	)	
	)	
UNION INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on December 12, 1997.

ISSUES

On her way to receive medical treatment for a work-related back injury, claimant was involved in an automobile accident. She reinjured or aggravated her back injury and also suffered new injuries to her hip and leg. At the time of the accident, claimant no longer worked for respondent. She worked for a different employer.

The issue before the ALJ, and on appeal, is whether the injuries from the automobile accident should be treated as injuries arising out of and in the course of claimant's employment.

The ALJ found the aggravation of the back injury was compensable but the new injuries were not. Claimant now contends all injuries suffered in the automobile accident are compensable. Respondent argues none of the injuries are compensable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order by the Administrative Law Judge should be modified and respondent should be required to pay all the expenses for treatment of injuries resulting from the automobile accident.

Respondent first contends that the Appeals Board does not have jurisdiction to consider this appeal. As respondent points out, the Appeals Board has limited jurisdiction to review

preliminary hearing orders. The Board can review only allegations that the Administrative Law Judge exceeded his or her jurisdiction. K.S.A. 1997 Supp. 44-551. The legislature identified specific jurisdictional issues in K.S.A. 1997 Supp. 44-534a. Those include whether the claimant's injury arose out of and in the course of employment. The Board construes the decision by the ALJ as a ruling that claimant's injuries, except for the aggravation of the back, did not arise in the course of employment. The decision is, therefore, subject to review.

The ALJ relied on, and the dispute here concerns construction of Taylor v. Centex Construction Co., 191 Kan. 130, 379 P.2d 217 (1963). Taylor involved a claimant injured in an automobile accident as he returned from a visit to a physician treating claimant's compensable eye injury. The Court ruled the injuries from the automobile accident were compensable but noted that claimant was paid during the trip and the trip was expressly authorized by the respondent, factors not present here. The Taylor Court also quoted from Larson's Workmen's Compensation Law, Vol. 1, p. 186, which, in the version cited, states that not all injuries in the course of a visit to the doctor are compensable.

> It should not, therefore, be necessarily concluded that anything happening to an injured workman in the course of a visit to the doctor is compensable. To get this result, there should be either a showing that the trip was in the course of employment by usual tests, or that the nature of the primary injury contributed to the subsequent injury in some way. . . .

The ALJ applied the quoted language to reach his decision. He considered the aggravation of the back injury to be an injury contributed to by the primary injury. But he found the new leg and hip injuries were not in the course of employment, stating: "Here the Claimant was no longer working for the Respondent and it cannot be said that the trip was in the course of employment by usual tests."

Although the Taylor decision may reasonably be construed and applied as the ALJ has here, the Board concludes a different construction is more appropriate. In our view, the overriding factor is that claimant was on a trip to receive treatment for a compensable injury. For reasons stated below, the Board believes injuries during that trip should be considered both to "arise out of" and to be "in the course of" employment, even where the claimant now works for another employer.

Taylor discusses the requirements that an injury "arise out of" and "in the course of" employment. The two phrases are separate and distinct and both must exist before compensation is allowed. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984). The phrase "arising out of" relates to the cause of the accident and requires a causal connection between injury and the employment. The phrase "in the course of" employment relates to the time and place of the accident. Angleton v. Starkan, Inc., 250 Kan. 711, 828 P.2d 933 (1992).

The Taylor Court had little difficulty concluding the injury arose out of employment. The obligations under the Workers Compensation Act are incorporated into the employment contract. The employer is obligated to provide and the employee is obligated to undergo

reasonably necessary medical treatment under the Act and, therefore, under the employment contract. Risks associated with the travel to obtain medical treatment are, therefore, treated as risks of the employment. The Court explained the rationale as follows:

> Under our workmen's compensation act (G. S. 1961 Supp., 44-510) one of the primary duties of an employer to an injured workman is to furnish him such medical, surgical and hospital treatment as may be reasonably necessary to cure and relieve the workman from the effects of the injury and restore his health, usefulness and earning capacity as soon as possible. The liability of an employer to an employee arises out of a contract between them and the terms of the act are embodied in the contract. . . . Section 44-518 provides that an employee must submit to medical treatment, or lose his benefits during the period that he refuses to submit to non-dangerous medical treatment. Taylor at 135-6.

Here it seems similarly clear that claimant's injuries "arose out of" employment. The risks involved in driving to the medical appointment are risks, as they were in Taylor, to which claimant would not be exposed except for the original injury and subsequent medical treatment. The injuries from the automobile accident result from an employment risk.

Whether claimant's injuries were "in the course" of employment is substantially more problematic. But, the Board is persuaded the injuries were "in the course of" employment even though claimant had gone to work for another employer. What Taylor did not mention, and because of other factors did not need to mention, is that the Workers Compensation Act also required respondent to provide transportation to medical treatment. Transportation is, therefore, part of the employment contract. K.S.A. 44-510 provides:

> [T]ransportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 . . . .

K.A.R. 51-9-11 also provides:

> It shall be the duty of the employer to provide transportation to obtain medical services to and from the home of the injured employee whether those services are outside the community in which the employee resides or within the community.

Since respondent is required under the Act to provide transportation, an accidental injury during that travel should be considered to be "in the course of" employment. In Taylor, the claimant was paid by respondent and respondent expressly authorized the trip. Those were handy factors supporting a finding of compensability. But, those factors do not, in view of the statutory obligation to provide transportation, appear to be necessary to make the claim compensable.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Jon L. Frobish, dated December 12, 1997, should be, and the same is hereby, modified and respondent ordered to provide medical treatment for all injuries suffered in the automobile accident of March 20, 1997.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
James B. Biggs, Topeka, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director